IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4779 OF 2001.

The General Secretary,
Pimpri Chinchwad Mahapalika
Karmachari Sangh. ... Petitioner.

V/s.

Pimpri Chinchwad Municipal
Corporation and another. ... Respondents.

Nitin Kulkarni i/b. N.V.Vechalekar
for the petitioner.

N.V.Walawalkar, senior counsel
for respondent No.1.

CORAM: V.C.DAGA, J.

DATED: 25th April 2006.

P.C.:

. Heard learned counsel for the petitioner.

. Perused petition.

2. This petition is directed against the order dated 21st September, 2001 passed in Complaint (ULP) No. 161 of 2000 by the Industrial Court, Pune, whereby the complaint filed under section 28(1) read with Items 5, 6, 9 and 10 of schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short) came to be dismissed.

3. Having heard rival parties, it is not in dispute that the members of the petitioner- union were working as Staff Nurses in the leave vacancy. They came to be appointed in leave vacancy after having gone through the gamut of interview. In order to fill in the post permanently, examinations were conducted, since 92 posts of Staff Nurse were lying vacant.

4. After having conducted written test on 22nd May, 2000 and after scrutiny of the applications, out of 92 candidates 83 posts were filled in on the basis of result of the test conducted. The remaining 9 posts could not be filled in as they were reserved for Schedule Tribes candidates, which were not available.

5. It is pertinent to note that out of 83 posts, which were filled in, 17 nurses were appointed from amongst those; who were already working in leave vacancy; since they were successful in the test conducted by the respondent- Corporation.

6. In all 54 Staff Nurses who were working in leave vacancy with respondent were called for written examination. Out of them, 50 Staff Nurses

were actually appeared in the written examination and out of them 17 nurses were selected since they were successful in the examination. It is, thus, clear that the respondent Corporation has complied with the rules and regulations relating to the selection of the Staff Nurses.

7. The members of the petitioner- union having appeared in the examination and having taken chance cannot now turn around and challenge selection process after finding them unsuccessful, and file complaint alleging unfair labour practices on the part of the respondent-Corporation.

8. The Apex Court in the case of **Madanlal & ors. v. State of Jammu & Kashmir & ors.** reported in 1995 (3) SCC 486 has held that a person taking chance in the test cannot be allowed to turn around and challenge the same. In this view of the matter, the view taken by the Court below is a reasonable and possible view. The petition is, thus, without any substance.

9. In the result, petition is dismissed in limine with no order as to costs.

10. In view of dismissal of the petition, civil application taken out therein does not survive. Civil application is disposed of as infructuous with no order as to costs.

(V.C.DAGA, J.)